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FEB 02 2007

REMARKS

The Pending Claims

Claims 1-7, 9-39 and 41-51 were pending in the application. Claims 1-6, 18-39 and 41-49 are hereby cancelled without prejudice. No claims have been added or amended. Thus, claims 7, 9, 10-17, 50 and 51 remain under examination.

Summary of the Office Action

The Office Action rejects claims 1-7, 9-11, 13-20, 22-32, 33-39, and 41-51 under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 5,908,663 (Wang et al.) (hereinafter "Wang") in view of (a) US 2005/00962010 to Fang et al. ((hereinafter "Fang"), (b) US 2002/0064639, US 2004/0058072, and US (no number provided) issued to Rearick et al. and (c) US 6,451,717 to Fitzgerald (hereinafter "Fitzgerald").

Claim 12 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Wang in view of Fang, Rearick, and Fitzgerald and further in view of US 5,573,553 to McBride et al. (hereinafter "McBride").

Claim 21 stands rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Wang in view of Fang, Rearick, Fitzgerald and McBride and further in view of US 5,540,968 to Higgins (hereinafter "Higgins").

Discussion of the Claim Amendments

Claims 1-6, 18-39 and 41-49 have been cancelled. Accordingly, it is respectfully submitted that all outstanding rejections to those claims are rendered moot. All remaining claims stand in the same form as considered in the preceding Office Action.

Discussion of the Section 103 Rejections

As best understood, all outstanding rejections rely on the combination of Wang in view of (a) Fang, (b) Rearick and (c) Fitzgerald. See Office Action paragraph 6. That is, the wording of the rejection does not contemplate a rejection based on Wang in view of Rearick and/or Fitzgerald without also relying on Fang. Thus, since the rejection is set forth solely in terms of the combination of all the secondary references, (a) Fang, (b) Rearick and (c) Fitzgerald, the elimination of any of these secondary references as available art appears to overcome the entire rejection. In the event that this was not the Examiner's intent, a new non-final rejection is requested.

The Fang reference was filed on October 14, 2003 and published on March 24, 2005. Thus, Fang appears to qualify as prior art only under 35 U.S.C. § 102(e). Moreover, the Fang reference and the instant application have at all times been owned by the same entity or subject to an obligation of assignment to

the same entity, namely Milliken & Company. Thus, it is respectfully submitted that Fang cannot properly be relied upon to support an obviousness rejection against the instant application. Accordingly, since Fang appears to be unavailable to support an obviousness rejection and all outstanding rejections rely on the combination of Fang, Rearick and Fitzgerald, it is respectfully submitted that all outstanding rejections should be withdrawn.

As noted at MPEP §2141, a determination of obviousness must be carried out in compliance with the standards enunciated by The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). Accordingly, the factual inquiries for determination of obviousness are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the prior art and the claims in issue;
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

The case law that has developed through application of these standards requires that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. MPEP §2143.01(I). The controlling case law and the MPEP make it

clear that the prior art as a whole must suggest not only the possibility but also the desirability of the proposed combination. Thus, the fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of that combination. MPEP §2143.01 (III). Likewise, the fact that the claimed invention may be within the capability of one of ordinary skill in the art does not establish *prima facie* obviousness. MPEP §2143.01(IV).

Notwithstanding the unavailability of Fang as a reference, in an effort to progress prosecution, the claim set has been narrowed to claims directed to scoured fibrous floor coverings incorporating a stain resist treatment composition including a fluorochemical repellent component, a stain blocking component, a particulate component; and a hydrophobic cross-linking agent. As best understood, no combination of available cited art teaches or suggests such a combination.

The Office Action states that Wang teaches working examples that have been scoured. In this regard, Applicants respectfully point out that as best understood the Examples in Wang using scoured carpeting actually indicate that the particle treatment of that invention (which the Office Action equates generally to the present invention) provides little benefit on scoured carpeting. See, Col. 17 lines 5-10; Col. 18, lines 10-15; Col. 19, lines 33-37. Thus, while it may be possible to apply the treatment compositions of Wang to scoured carpeting, there

appears to be no motivation in the primary reference itself for doing so. To the contrary, the absence of meaningful benefit from the application of the composition in Wang would weigh against its use on scoured carpeting since such application would add expense with little or no benefit.

Aside from the fact that the application of the Wang composition is taught to provide little benefit on scoured carpeting, the combined teachings of Wang and Rearick actually weigh against the use of a composition incorporating a hydrophobic cross-linking agent on a scoured fiber surface. In this regard, Applicants respectfully note that Wang teaches that organic additives in the composition preferably do not degrade the feel or hand of the carpet. Col. 7, lines 19-23. However, Rearick teaches that the fluorochemical with cross-linking agent will cross-link with the scoured fibers while being blocked from cross-linking with the raw fibers due to the presence of oils and waxes on the raw fibers. It is respectfully submitted that such cross linking between the applied cross-linkable fluorochemical and the fiber would likely be viewed as being inconsistent with the goal in the primary reference to Wang of avoiding degradation of the fabric hand.

In light of the teachings in the cited references to Wang and Rearick, Applicants respectfully submit that there would be substantially no incentive for using the Wang composition on scoured fabric since the teachings of Wang indicate that little if any benefit would be expected. Certainly there would be no

incentive for incorporating a cross-linking agent since this would potentially result in cross-linking with the scoured fiber thereby risking a degradation in fabric hand. Thus, it is respectfully submitted that any continued rejection of the remaining claims is necessarily founded merely on the impermissible basis of what could have been done rather than on what would have been motivated by the art.

Conclusion:

For the reasons set forth above, it is respectfully submitted that all claims now stand in condition for allowance.

Should any issues remain after consideration of this Amendment and accompanying Remarks, the Examiner is invited and encouraged to telephone the undersigned in the hope that any such issue may be promptly and satisfactorily resolved.

Extension of Time: A three month extension of time accompanies this submission. Any additional fees necessary for the acceptance of this submission may be drawn from Deposit Account No. 50-1424.

Respectfully submitted,



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